

January 10, 2001

Advisory Opinion 2000 - No. 5

The Board has received a request for an advisory opinion from a legislator who has been asked to provide a number of congratulatory letters at public expense.

FACTS

A legislator received a request to provide approximately two hundred fifty, congratulatory letters to elementary students within the legislator's legislative district for completing the Drug Abuse Resistance Education program (DARE). The DARE officer would receive the letters from the legislator and place them in a binder, together with a DARE certificate, for presentation to the students.

QUESTIONS

The legislator asks:

1. Would this mailing, prepared at public expense, violate the Ethics in Public Service Law (the "Act")?
2. For the purposes of analyzing the first question, would it make a difference if the mailing restrictions in **RCW 42.52.185** are in effect?

OPINION

1. The proposed congratulatory mailing would violate the Act because it falls beyond the official duties of the legislator and is not normal and regular conduct of the legislative office.
2. Under these facts, it does not make a difference if the mailing restrictions found in **RCW 42.52.185** are in effect because the mailing would violate other provisions of the Act which are in effect during the entire legislative term.

ANALYSIS

In **Advisory Opinion (AO) 1995 - No. 17**, the Board was asked to analyze several different types of letters which would be prepared and mailed at public expense to an individual or to an individual agency. One of these letters would be sent to ". . . a person who has achieved a civic distinction of some sort. . . ." Three different provisions of the Act were analyzed. **RCW 42.52.070** prohibits the use of a legislator's position to secure special privileges for her or him, or another, but exempts uses of the office which are required to perform duties within the scope of employment (the legislator's employment). **RCW 42.52.160** prohibits the use of public resources for the private benefit or gain of anyone but exempts the use of public resources to benefit others as part of a legislator's official duties. Finally, we noted that **RCW 42.52.180** prohibits the use of public resources to assist a legislator's campaign either directly or indirectly. One of the exemptions in this statute is for activities that are part of the "normal and regular" conduct of the office. "Scope of employment," "official duties" and "normal and regular conduct"

were all before the Board for discussion.

We concluded that a single, congratulatory letter prepared with the use of public facilities, for a person who had achieved an extraordinary distinction, would be the type of activity which would fall within a legislator's duty and constitute normal and regular conduct of the office.

However, we urged caution in sending congratulatory letters at public expense. Particularly, we noted that mass mailings of such letters would seem to fall outside any legislative duty as would any letter sent for a non-extraordinary achievement. Furthermore, we noted that both a mass mailing and a mailing for a non-extraordinary achievement would be suspect under **RCW 42.52.180**. By way of guidance we advised that birthdays and regular graduations would not normally be viewed as extraordinary.

AO 95 - No. 17 was decided without reference to any statute directed at mailings. At the time of the opinion the restrictions on election year mailings were found in **RCW 42.17.132**. In pertinent part, those restrictions read as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

. . .

The legislator may mail an individual letter to an individual constituent . . . who has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office . . .

Later, in **AO 96 - No. 7**, the question was whether in an election year legislators could write congratulatory letters to Washington Scholars, certain athlete-scholars and Eagle Scouts, absent a request from the award-recipient. The answer was "no" because **RCW 42.17.132** was very specific and it required that the award-recipient contact the legislator and request such a letter. This Board questioned whether the statute should be reviewed by the Legislature for the purpose of determining ". . . whether letters such as these should continue to fall within the law's reach." We reasoned that even though **AO 95 - No. 17** was authority for the proposition that certain congratulatory letters would not violate the Act, that opinion could not be stretched to the point of rendering the explicit language of the election year mailing statute, **RCW 42.17.132**, inapplicable.

In 1997, the Legislature did amend . 132 and recodified the section as **RCW 42.52.185**. Election year mailings were now part of the Act and fell within this Board's direct jurisdiction. The amended version addressed the issue of congratulatory mailings in an election year by (1) dispensing with the requirement that a constituent have to contact a legislator and request congratulations on his or her own behalf; (2) listing certain awards which were noteworthy enough to permit an election year letter; and (3) providing a test by which to gauge other awards not specifically listed.

In **AO 95 - No. 17** we said:

We advise members to exercise caution in sending congratulatory letters at public expense. *Mass mailings* of such letters would not seem to fall within legislative duty. Nor would sending congratulatory letters to persons whose civic achievements are *not extraordinary*.

After the 1997 amendments, **RCW 42.52.185** reads, in pertinent part, that an *individual* letter

may be sent to:

(iii) an *individual* constituent who has received an award or honor of *extraordinary* distinction of a type that is sufficiently infrequent to be noteworthy to a reasonable person, including, but not limited to: (A) An international or national award such as the Nobel prize or the Pulitzer prize; (B) a state award such as Washington scholar; (C) an Eagle Scout award; and (D) a Medal of Honor. (Emphasis added)

In effect, the Legislature adopted the test enunciated by the Board in **95 - No. 17** and applied it to election year mailings. The result is that **RCW 42.52.185** has added flexibility and congratulatory mailings in an election year are to be assessed on the same criteria in effect during the balance of a legislative term.

The DARE program, like many other well-intentioned programs, may be worthwhile but an elementary graduation from the program is not "extraordinary" as that term has been defined by this Board and by the Legislature.

On page 16 of the 2000 edition of the **Legislative Ethics Manual**, the Board has approved language which brings together the mailing statute, the precedents, and the informal advice of Board legal counsel on this issue of congratulatory efforts on the part of legislators at public expense. It is stated there, and worth repeating in this opinion, that legislators are free to congratulate whomever they wish by personal mail, phone calls, etc.. It is the use of public facilities which invokes the statutory restrictions.